

1992

# Cynthia Williams v. Kenneth R. Shannon : Appeals Brief

Utah Court of Appeals

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## Recommended Citation

Legal Brief, *Williams v. Shannon*, No. 920424 (Utah Court of Appeals, 1992).  
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KENNETH R. SHANNON  
DEFENDANT/APPELLANT  
UTAH STATE PRISON INMATE # 16854  
P.O. BOX 250  
DRAPER, UTAH 84020

UTAH COURT OF APPEALS  
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THE UTAH COURT OF APPEALS

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CYNTHIA WILLIAMS,	*	APPEALS BRIEF
PLAINTIFF/APPALLED	*	
	*	
VS.	*	
	*	
KENNETH R. SHANNON	*	CASE NO. 920424-CA
DEFENDANT/APPELLANT	*	

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**FILED**  
SEP 8 1992  
**COURT OF APPEALS**

Statement of Relief Sought

The Defendant request the Default Judgment Divorce be set

aside and a new hearing scheduled in which he would be summoned from the Utah State Prison and transportation would be arranged and the Defendant could have his day in Court.

### Facts

1. The Plaintiff filed a complaint of divorce September 1991, in the Third District Court.

2. On May 26, 1992, pursuant to the Notice of Pre- Trial, this matter came before the Court.

3. The Plaintiff was present and represented by counsel.

4. The Defendant was not present nor was he represented by counsel.

5. Commissioner Micheal S. Evens, after reviewing the papers and pleading on file and finding that Defendant's counsel had withdrawn and that the Defendant failed to appear or appoint new counsel, ruled that defendant's default be entered and that plaintiff be awarded her divorce from defendant.

6. Defendant filed a Notice of Appeal on or about the 9th day of June, 1992.

7. Defendant filed his Docketing Statement on or about the 15th day of July, 1992.

### Issues

1. Being incarcerated at the Utah State Prison. The Defendant cannot come and go freely.

2. The Utah State Prison will not provide legal services for civil matters.

3. The prison mail service is so slow, being that all mail is searched for contraband. That time limits can not be met in all circumstances.

4. When the Defendant is not in Court or have legal access, the Court's tend to rule under the influence of passion and prejudice favoring the Plaintiff.

5. All the life long accumulations of the defendant's, are at stake in this divorce proceeding amounting to hundreds of thousands of dollars making it far from frivolous.

6. The Utah State Prison has no books on the Utah Rules of Appellate proceedings in it's library placing the Defendant's cause at a disadvantage, even if he was knowledgeable in legal matters.

7. The Commissioner Micheal S. Evens, new the defendant need the Courts to summons him in order to be transported to Courts and had the opportunity to set a new hearing with the Defendant present.

#### Argument

The Defendant had no control in being present at the hearing, this had to be in the control of the Court. Although the Defendant was notified of the Pre-Trial, it had little baring on his ability to be present. As such the Defendant feels the ruling of default was not in the interest of his Constitutional Right to be present at a trial with such grave consequence and should be set aside because the ruling was excessive and inadequate, not having heard the Defendant's testimony or seen

his evidence. An defendant feels this divorce was ruled on with prejudice and passion favoring the Plaintiff totally, with no consideration for the Defendant or his properties.

### Conclusion

The Defendant/Appellant Kenneth R. Shannon pleas for a favorable ruling regarding his appeal to have new hearing scheduled; in that he feels it's his Constitutional Right to be present at a hearing with so much at stake. If he can not be represented by counsel, being indigent, he should at the least be present to testify and present evidence. It is very clear the Court was aware the Defendant was incarcerated and would have to be summoned. (Defendant exhibit A attached.)

Dated this 1st day of SEPTEMBER, 1992

  
Kenneth R. Shannon  
Defendant/Appellant

**In the District Court of the Third Judicial District  
In and for Salt Lake County, State of Utah**

CYNTHIA WILLIAMS

Plaintiff

vs.

KENNETH R SHANNON

Defendant

**Notice of Pre-Trial  
Settlement Hearing**

Civil No. 914903851

The court has set a pre-trial settlement hearing on this case as follows:

~~Judge~~ Judge: COMM MICHAEL S EVANS

Date: May 26, 1992

Time: 10:00 am

Circuit courtroom 340

Counsel as well as both clients are to be present so that if settlement is reached, the divorce may be granted at this hearing.

If the domestic calendar clerk has not heard from you within five (5) days from the date of this notice, this hearing date will be considered firm; and upon failure to appear, default will be entered.

Counsel are required to submit to the domestic calendar clerk a written settlement proposal five (5) days prior to the pre-trial settlement hearing and to opposing counsel.

The Financial Declaration forms for both plaintiff and defendant must be filed with the domestic calendar clerk at least five (5) days prior to pre-trial settlement hearing. Failure of counsel to supply the required financial information may result in the matter being stricken. If only one party responds, then that party's statement will be deemed as true, and the court may enter its order accordingly.

In the event a matter is stricken, the court will notify both counsel and their clients as to the reasons therefor.

If settlement is reached prior to hearing, then the court at the time of the pre-trial settlement hearing may grant the divorce requested on a proper showing as though a default matter.

Both counsel are required to follow Utah Rules of Civil Procedure in providing the address of their clients to the court and to each other at the time of the filing of Complaint; and if not done so, on receipt of this document.

Copies of this notice were mailed to the following attorneys and/or parties at the addresses indicated:

ROBERT W HUGHES, 7050 S Union Park Ave, Ste 420, PO BOX 57005

SLC, UT 84157-0005

KENNETH R SHANNON, INMATE # 16854, PO BOX 250, Draper, Ut 84020

Dated this 4th day of May, 19 92.

Michael S Evans

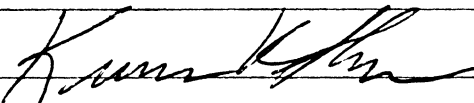
District Judge

EXHIBIT  
A

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT ON THIS DATE HE CAUSED TO BE MAILED A COPY OF THE FOLLOWING TO CYNTHIA WILLIAMS, THROUGH HER ATTORNEY ROBERT W HUGHES ATTORNEY P.O. BOX 57005 SALT LAKE CITY UTAH 84157 BY UNITED STATES MAIL, POSTAGE PREPAID.

DATED THIS 1ST DAY OF SEPTEMBER, 1992

  
KENNETH K. SHANNON  
APPELLANT